

# **MINUTES**

## **Tennessee Board of Examiners for Land Surveyors**

The Tennessee Board of Examiners for Land Surveyors met on Wednesday and Thursday, January 5-6, 2005, at 9:00 am in Room 212 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, TN.

### ***WEDNESDAY, JANUARY 5, 2005 –***

Those present were: Max Billingsley, Board Member; David Mathews, Vice-Chairman; Sue Braly, Public Board Member; Scott Ledford, Attorney for the Board; Donna Moulder, Administrative Director for the Board; and Carol Kennedy, Administrative Assistant for the Board.

Pete Ragan, Chairman, was not present.

The meeting was called to order at 9:15 a.m. by David Mathews, Vice-Chairman.

The board discussed “as built” and “record” drawings as they pertain to engineers and surveyors. Max Billingsley wrote a policy statement regarding the matter. After reviewing Mr. Billingsley’s statement, Mr. Mathews directed Scott Ledford, Staff Attorney, to have legal review the “as built” policy statement that was written by Mr. Billingsley and respond back to the board as soon as possible.

Mr. Ledford announced that effective January 18, 2005 he would no longer be the board’s attorney. The new attorney will be Robert Herndon.

Mr. Billingsley made a motion to offer the policy statement from this board to clarify an issue that has occurred within the state, whereby a surveyor has not been able to submit a set of survey drawings due to the fact that the policy was misunderstood by planning jurisdictions in this state, as stated in the policy. Sue Braly seconded the motion. The motion carried unanimously.

Bill Burris informed the board that a secondary investigation is still pending in investigations regarding Complaint #200419545.

Mr. Ledford informed the board that the revisions to the Standards of Practice are going to need more work by the legal staff.

The board then reviewed the minutes of the September 2004 and October 2004 meetings. Max Billingsley made a motion to approve the September 2004 minutes as presented. Sue Braly seconded the motion. The motion carried unanimously. After reviewing the October 2004 minutes, Max Billingsley made a

motion that the October 2004 minutes be approved as written. Sue Braly seconded the motion. The motion carried unanimously.

Daniel Humphreys, TLS #2060 met with the board, at Mr. Humphreys' request, to discuss clarification on "as built" drawings.

Scott Ledford then presented the following complaints for review:

***Complaint #200418473 – Board vs. SurveyAmerica –***

This respondent does not have a registered land surveyor in Tennessee, nor does it have an office here. However, they are offering land surveying services in Tennessee.

On June 7, 2004, upon the board's authorization, a cease and desist letter was sent to the respondent. On July 1, 2004, the staff attorney received a letter from the respondent's attorney citing changes to the respondent's web site to ensure that there was no confusion. The letter also requests a meeting, either in person or on the phone, to close the matter.

On September 7, 2004 the respondent's attorney requested that the board postpone discussion of this matter until the October 2004 meeting.

The board's staff attorney called the respondent's attorney in October about the requested meeting and left a message, but did not get a return call.

In December 2004, the staff attorney spoke with the respondent's attorney again and the respondent's attorney stated the he hadn't really heard much from the respondent since the two attorneys had last spoke. The respondent's attorney state that he would call the board's attorney "after the holidays"

Mr. Ledford recommended closing this complaint unless the respondent's attorney says something incriminating the next time Mr. Ledford speaks with him. The respondent's attorney is still of the understanding that his client will not be doing business in Tennessee any more until the respondent has a Tennessee licensee on staff.

Max Billingsley made a motion to close this complaint at the present time until such time as other complaints or issues come up, then the board will revisit the entire "litney" of investigations and considerations that the board has made prior to this time. Sue Braly seconded the motion. The motion carried unanimously.

***Complaint #200419457 – Board vs. Franklin –***

This complaint alleges practice on an expired license. The complaint was brought by the board after receiving a letter from a survey company that employed the respondent, fired him and then subsequently learned that the respondent's registration was expired while he worked for them. The respondent's license expired on December 31, 2002.

An investigation revealed enough evidence to file formal charges against the respondent. However, it should be noted that the respondent has now lost his right to renewal. At the October 2004 meeting, the board voted to send a generous consent agreement to the respondent.

On November 2, 2004, Mr. Ledford delivered the consent order to his secretary for mailing. On November 15, 2004 the consent order was received back in the legal section, returned with a label that said *"moved – left no address, unable to forward, return to sender."*

On December 17, 2004, Mr. Ledford verified with Carol Kennedy of the board office that the address on the envelope is the last known address that the board has for this respondent. Mrs. Kennedy verified this to be true.

Max Billingsley made a motion to rescind the \$250.00 and make it \$1,000.00. If the civil penalty of \$1,000.00 is not paid, then the board will file formal charges against the respondent and/or allow the investigators to pursue it in the civil courts. Sue Braly seconded the motion. The motion carried unanimously.

***Complaint #200419757 –***

The complaint alleges that the surveyor did not personally survey one of the lines, but rather, that he sealed a plat that drew one line based on the work of other surveyors. The respondent has not adequately addressed this, nor has he adequately addressed the allegation that he did not notify adjoining land owners of possible adverse use or possession.

At the October 28, 2004 meeting, the board voted to have the respondent appear before the board at an informal conference to be held at the January 2005 meeting. However, the respondent is recovering from surgery and could not appear at this meeting. Max Billingsley made a motion to defer this informal conference until the next meeting. Sue Braly seconded the motion. The motion carried unanimously.

***Complaint #200420258 –***

The complainant appears to have lost a boundary dispute in chancery court. The complainant had hired the respondent to survey his land in 1998 but did not receive a completed survey. The respondent had stopped work until receiving payment, but subsequent to his notice of this, the complainant appears to have paid what was asked for. Scott Ledford, staff attorney, spoke with the respondent, who told Mr. Ledford that the complainant had very certain ideas of where the corner was supposed to be and that the respondent's crew disagreed with the complainant's position, so the complainant threw the respondent's crew off of his land and this is why the corner was never set.

Max Billingsley made a motion to bring in both the complainant and the respondent for an informal conference at the next meeting. Sue Braly seconded the motion. The motion carried unanimously.

***Complaint #200420663***

This complaint is a board generated complaint in response to a letter received by the board staff on August 12, 2004. This letter was written by a licensed land surveyor and accuses the respondent of practicing land surveying without a license. No evidence is provided, although names and telephone numbers of people who allegedly have knowledge of the situation are given in the letter.

On October 28, 2004, the board finalized the complaint forms and this complaint was sent to Investigations.

The matter is still pending in Investigations.

***Complaint #200420664***

This is the companion complaint to Complaint #200420663. It also alleges that this respondent has been preparing land descriptions without being licensed as a land surveyor. Like its companion, the complaint doesn't have anything other than hearsay evidence.

On October 28, 2004, the board finalized the complaint forms and this complaint was sent to Investigations.

The matter is still pending in Investigations.

***Complaint #200420789***

This complaint alleges practicing on an expired license. The file contains everything needed for a criminal conviction or a successful contested case hearing. The only outstanding issue is whether to send this complaint to Investigations to uncover more evidence. As it stands now, the board has one plat that is sealed and dated after the date of this respondent's license expiration. The plat is dated in May of 2004 while the respondent's license has been expired since December 31, 2001.

Max Billingsley made a motion to go with the evidence that the board now has and refer it for criminal prosecution. Sue Braly seconded the motion. The motion carried unanimously.

***Complaint #200420300***

This complaint alleges the surveyor, whom the complainant hired to survey his land, later changed the survey and filed a new plat that diminished the size of his lot and the respondent did not tell the complainant about the changes.

The respondent's response recites a somewhat convoluted and very long story where the respondent admits to making the change because of a different survey that had not been in the tax deed, but was filed with the county registrar. The respondent did not know about this survey that performed pursuant to a sale of a strip of land because it, and not a deed, had been filed, and it was thus not shown on the tax card for the property. The respondent had also not been told that the land in question was the subject of a boundary dispute agreement that had been filed in the registrar's office.

Max Billingsley made a motion to bring both the complainant and the respondent in for an informal conference. Sue Braly seconded the motion. The motion carried unanimously.

***Complaint #2004211061***

This complaint alleges noncompletion of a survey that a down-payment was made for. The complaint does not show full payment of the price and although the respondent has not responded to this complaint, the board's records show that the respondent's license expired on December 31, 2003.

Carol Kennedy, administrative assistant for the board, informed the board that the respondent in this matter did renew his license on December 28, 2004.

Max Billingsley made a motion to call the respondent and the complainant in for an informal conference. Sue Braly seconded the motion. The motion carried unanimously.

***Complaint #200421435 – Wiseman vs. Bray***

At his own request, Paul Bray, the respondent in this matter, was present along with Ed Davis, who is Mr. Bray's business partner.

Mr. Bray's license expired on December 31, 1990. Mr. Bray admitted to stamping approximately 50-60 surveys during the time that his license was expired.

Max Billingsley made a motion to offer Mr. Bray a consent agreement and civil penalty of \$5,000.00 to settle the issue of unlicensed practice. Sue Braly seconded the motion. The motion carried unanimously.

Scores of the October 2004 examinations were then reviewed. Max Billingsley made a motion to accept Peter Messier's recommended cutoff of 65 (add 5 points) to the Tennessee specifics (TLS) examination.

Sue Braly made a motion to use 63 as a cutoff on the TLS exam as passing raw scores. Max Billingsley seconded the motion. The motion carried unanimously.

Max Billingsley made a motion to adopt a policy statement as written as the policy of this board to clarify the policy statement made by the Board for Architects and Engineers pertaining to as built and record drawings as this policy relates to the practice of land surveying.

There being no further business, the meeting was adjourned at 1:40 p.m.

***THURSDAY, JANUARY 6, 2005 –***

Those present were: Max Billingsley, Board Member; David Mathews, Vice-Chairman; Sue Braly, Public Board Member; Scott Ledford, Attorney for the Board; Donna Moulder, Administrative Director for the Board; and Carol Kennedy, Administrative Assistant for the Board.

Pete Ragan, Chairman, was not present.

David Mathews, Vice-Chairman, called the meeting to order at 9:25 a.m.

***INFORMAL CONFERENCE – Complaint #200419775 – McCall vs. House***

The original complaint in this matter was dismissed at the September 2004 meeting, but the board requested a meeting with the respondent because of substandard work. The respondent's plats did not meet the Standards of Practice. After discussing the matter with the respondent, Max Billingsley made a motion to issue the respondent a letter of warning, citing infractions and close the matter. Sue Braly seconded the motion. The motion carried unanimously.

***INFORMAL CONFERENCE – Complaint #200419763 – Langley vs. Reasons***

This complaint is basically a boundary dispute. The complainant does not like where the boundaries have been set. The respondent is alleged to have favored physical markers over measurements, such as setting corners at the center of a creek, despite the fact that the creek might have moved. Sue Braly made a motion to dismiss the complaint based on the owner's opinion of the property line as opposed to the surveyor's professional opinion of what his product is. David Mathews seconded the motion. The motion carried unanimously.

The board then reviewed the re-application of G. Paul Bray. David Mathews made a motion to approve Mr. Bray's application upon Mr. Bray's payment of the civil penalty of \$5000.00 and his signing of the consent order. Max Billingsley seconded the motion. The motion carried unanimously.

The board reviewed continuing education submitted by Larry Addison. Max Billingsley made a motion to accept Mr. Addison's request for 16 hours of continuing education credit. Sue Braly seconded the motion. The motion carried unanimously.

Max Billingsley made a motion to have the board accept the workshop hours for continuing education that Mr. Billingsley and David Mathews attended at the NCEES conference in Cleveland, OH in August 2004.

The board reviewed and discussed the changes that needed to be made to the Rules.

There being no further business, the meeting was adjourned at 1:30 p.m.

Respectfully submitted,

Donna Moulder  
Administrative Director

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Marshall H. (Pete) Ragan, Chairman

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David L. Mathews, Vice-Chairman

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K. Max Billingsley

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Sue Braly



## **APPLICANTS WHO PASSED THE OCTOBER 2004 EXAMINATION**

Zackary Dean Thomas (PLSIT)  
Philip James Gotro (PLSIT)  
John R. McCarty (PLSIT)  
Thomas K. Harvey  
Christopher Blake Sexton  
Piroschka Lynn Spencer  
Dixon Lynne Gilbert Brackett  
Kevin D. Collins  
Christian McGraw Medders  
Thomas Lynn Snyder  
Rodney E. Abney, Jr.  
Jeffery Allen Arnold  
Terry Arthur Baker  
Randall A. Freeman  
Christopher Walter Hodge  
Mark Steven Puckett  
Lewis Ray Shelton, Jr.  
Charles Thomas Wood

## **APPLICANTS WHO FAILED THE OCTOBER 2004 EXAMINATION**

William Judson Duke  
David Clinton Evans  
Douglas Eric Jones  
John C. Sexton  
Jeffrey M. Weems  
Jonathan W. Willis  
Carlen Jay Wiggins, Jr.  
Martin Figura  
Randall Ray White  
Lance Evan Holloway  
William Brock Mathews  
Michael Wayne Netherton  
Clint Thomas Elliott  
William Cochrane Hamilton  
David Robert Herndon  
Glenn L. Trent

